IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

State of Rajasthan vs. Chandra Mohan Chopra

S.B.Civil First Appeal No.23/1985 under Section 96 C.P.C. against the judgment and decree dated 15.11.1984 passed by Shri Vishambhar Dayal Gupta RHJS, Additional District Judge, No.1, Kota in Civil Suit No.75/1981.

Date of Judgment :::::: April 13, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mrs. Nirmala Sharma Dy.G.A. for appellant.
Mr. Sanjay Sharma for respondent.

BY THE COURT (ORAL):-

Plaintiff-respondent Chandra Mohan Chopra approached the learned trial court by filing a suit for recovery of Rs.36,437/- along with interest and the cost of the litigation. The case of the plaintiff was that pursuant to the tender notice, a contract for construction of a road from Gaughat to Bapawar was awarded to him an an agreement

was executed between the plaintiff and the defendant. According to the work order, the total cost of the work was Rs.4,04,250/-. It was mentioned that the defendant withdraw the work from the plaintiff and on 14.8.1979 final bill was prepared. As per the case of the plaintiff, he completed the work of Rs.3,34,973 whereas payment of Rs.3,29,862/- only was made to him. It was the case of the plaintiff that Rs.5,111/- was not paid to him against the running bills and was entitled to get Rs.17,994/- deducted by the defendant as security amount while making payment of the running bills. As per the case of the plaintiff, he was also entitled to get Rs.6,000/- and interest thereon deposited by him as security deposit.

In the written statement, the defendant appellant has not disputed the fact of awarding contract, the deductions made from the running bills and the security deposits but it was the case of the defendant that as per the terms and conditions of the contract, the security amount could be refunded after sanction of the Chief Engineer, PWD. The defendant also disputed this fact that amount of Rs.5,111/- remained out standing against the final bill. As per the defendant, against the final bill an amount of Rs.1,746/- only was out standing. It was then mentioned that the plaintiff left the work incompleted, he was not entitled to

get any amount from the defendant. Validity of the notice under Section 80 C.P.C. was also disputed. In the last it was submitted that in view of clause 30 of the agreement, the plaintiff was not entitled to get any amount.

On the basis of the pleadings of the parties, the learned trial court framed as many as 9 issues.

Plaintiff Chandra Mohan Chopra appeared as PW.1 and also exhibited five documents. Neither any witness was examined in defence nor any document was produced. During hearing of the case, plaintiff left issue No.1.

The learned trial court after hearing both the parties and taking into consideration the evidence and material produced on record, decided all the issues in favour of the plaintiff and thus, vide judgment dated 15th November, 1984 decreed the suit. Hence, this appeal.

Heard learned counsel for the parties.

Learned counsel for the appellant contended that the learned trial court has wrongly appreciated the evidence of the parties while deciding the issues. On the other hand, learned counsel for the plaintiff-respondent supporting the

finding of the learned trial court has contended that the findings of the learned trial court are based on proper appreciation of evidence available on record. Hence, require no interference by this Court in first appeal.

After hearing learned counsel for the appellants, I have gone through the impugned judgment and have scanned the material and evidence available on record.

To prove issue No.2 PW.1 Chandra Mohan Chopda has deposed that the final bill of the work done by the plaintiff was prepared by the defendant as per the Measurement Book Ex.P.1 which bears name of the plaintiff at page No.16 and also bears signatures of Oversear and there is mention of Rs.5110/- at page 21. As per the case of the plaintiff, officers of the department illegally made deductions in the bill in his absence and even without informing him. There is no evidence to controvert this evidence of the plaintiff and thus, the evidence of the plaintiff remained uncroverted. In such circumstances, the learned trial court recorded a finding that the plaintiff is entitled to get Rs.5110/- towards the final bill. In the facts and circumstances of the case and without there being any evidence contrary to the evidence of the plaintiff, I am of the opinion that the finding arrived at by the

learned trial court on issue No.2 is in accordance with the evidence available on recprd and does not call for any interference. As a result of the discussions above, I am also of the opinion that the plaintiff is entitled to get interest on this amount @ 10% per annum and thus, finding of trial court on issue No.5 also does not require any interference.

So far as issue No.3 is concerned, the defendant has not disputed deduction of Rs.17,994/- and also non-payment of earnest money. Considering clause 37 of the contract agreement, the learned trial court has observed that the security deposits should have been retruned within six months of the date of completion of work. As per the case of the plaintiff the work was completed on 19.8.1977 but the security deposits were not returned to the plaintiff without any reason. The case of the defendant was that the matter was referred to the Chief Engineer and the Chief Engineer returned the same with some objections. It was an internal matter of the department for which the plaintiff cannot be penalised. In this view of the matter, I am of the opinion that the finding of the learned trial court on issue No.3 requires no interference.

As has been held above, the security deposits of the

plaintiff were not returned by the defendant because of the negligence of the concerned authority, the plaintiff is entitled to get interest on this amount. In this view of the matter, I find no error in the finding of the learned trial court on issue No.4.

Since the defendant has failed to give reply the notices send by the plaintiff and the suit of the plaintiff has been decreed, I find no error in the finding of the learned trial court on issue No.6 also, holding the plaintiff entitled to get costs of notice amounting to Rs.31/-.

Regarding finding on issue No.7 it can be said that since the defendant has not been able to give any reason showing that the notice sent by the plaintiff under Section 80 C.P.C. was illegal in any manner, the finding recorded by the learned trial court on this issue also requires no interference.

Issue No.8 is related to clause 30 of the work agreement, according to which the decision of the Chief Engineer on any dispute between the parties under the agreement was final. Considering the clause the learned trial court has observed that the clause does not mean that

the plaintiff could not approach law court to recover his due amount. In the facts and circumstances of the case and taking into consideration the clause, I am of the opinion that the finding of the learned trial court on this issue cannot be said to be perverse or illegal. Thus, the same requires no interference.

No other point has been raised.

For the discussions above, the first appeal fails and is, hereby dismissed with no orders as to costs.

(K.C.Sharma),J.

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